SIKKIM

GOVERNMENT GAZETTE

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT

No. 16/LD/2007 **Date: 16.10.2007**

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 19th day September, 2007 is hereby published for general information:-

THE SIKKIM PRISONS ACT, 2007
(Act No. 16 of 2007)

AN
ACT

to provide for a law regulating the prisons in Sikkim.

Be it enacted by the Legislature of Sikkim in the Fifty-eighth Year of the Republic of India as follows: -

CHAPTER I

Short title, extent and commencement.

1. (1) This Act may be called the Sikkim Prisons Act, 2007
(2) It extends to the whole of Sikkim;
(3) It shall come into force on such date as the State Government may, by notification, in the official gazette appoint.

Definitions.

2. In this Act, unless the context otherwise requires: -
(a) "civil prisoner" means any prisoner who is not a criminal prisoner;
(b) "Competent authority" means any officer having jurisdiction and legal authority to deal with a particular matter in question;
(c) "convicted criminal prisoner" means any criminal prisoner under sentence of court or court-martial, and includes a person detained in prison under the provision of Code of Criminal Procedure, 1973;
(d) "Court" includes any officer lawfully exercising civil, criminal or revenue jurisdiction;
(e) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of a court-martial;
(f) "Central Jail" means any prison in which criminal convicted prisoners are received, for the purpose of undergoing their sentences, by transfer from any other Jail and in which such prisoners are not, when committed to prison, in the first instance ordinarily received;
(g) "Deputy Inspector General or Sr. Superintendent of Prisons" (hereafter referred as DIG / Sr.S.P.) means the Head of the Prison, whoever is appointed by the Government;

(h) "district jail" means any prison to which prisoners from the [illegible] are in the first instance, ordinarily committed and includes every jail other than a Central Jail or a special Jail;

(i) "detenu" means any person ordered to be detained and committed to a place of detention in the State by any authority acting in exercise of the powers conferred by such Act in the State;

(j) "habitual offenders" means a person – who during any continuous period of five years whether before or after the commencement of the Act, has been convicted and sentenced to imprisonment more than twice on account of the following offences: -

(i) Offence mentioned in Chapter XII of the IPC, 1860 (Act, 45 of 1860)

(ii) Offence punishable under the following section of the IPC (Act, 45 of 1860) U/s 379, 380, 381, 382, 384, 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 406, 407, 409, 411, 412, 413, 414, 416, 417, 420, 421, 423, 436, 468 and 498 (A).

(k) "history-ticket" means ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules made there under;

(l) "imprisonment" may be of two descriptions - (a) rigorous i.e. with hard labour and (b) simple without hard labour;

(m) "inmates" means any person kept in an institution;

(n) "institution" means a place where offenders are kept;

(o) "Government" means the State Government of Sikkim;

(p) "Jail Manual" means the manual for the Superintendence and management of Jail in the State of Sikkim;

(q) "Medical Officer" means a doctor designated as such and appointed under this Act;

(r) "offender" means a person who is accused of having committed an offence punishable under the law;

(s) "offence" means any act or omission made punishable by any law for the time being in force and shall also mean any act or omission contrary to the provisions of law, which has been made punishable;

(t) "prohibited article" means an article which cannot be introduced or removed into or out of prison under this Act and rules framed thereunder;

(u) "place of detention" means a Jail or other place in the State in which a detenu is ordered to be detained;

(v) "prison" means any jail or place used permanently or temporarily under the general or special order of State Government for the detention of prisoners and includes all lands and buildings appurtenant thereto but does not include-

(a) any place for the confinement of the prisoner who are exclusively in the custody of the police;

(b) any place specially declared by the State Government under section 417 of the Code of Criminal Procedure, 1973 or

(c) any place, which has been declared by the State Government by general or special order, to be a subsidiary jail.

(w) "remission" means the rule for the time being in force regulating the award of marks to and the consequent shortening of the sentences of Prisoners in Jail;

(x) "rules" means a rule framed under this Act;

(y) "Special Jail" means any prison provided for the confinement of a particular class or classes of Prisoners and classified as Special Jail by the Government;

(z) "Superintendent" means the Superintendent of the Prisons as may be appointed by the State Government on deputation from Police Department.

(aa) "Under Trial Prisoners" means a person who has been committed to prison custody with pending investigation or trial by a competent authority;

CHAPTER II
MAINTENANCE AND OFFICERS OF PRISON

Accommodation for prisoners. 3. The State Government shall provide, for the prisoners in its territory, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners or may set up such other prisons at such place as it may consider expedient and may in cases set up temporary or special prison.

Deputy Inspector General or Sr. Superintendent of Prisons. 4. The State Government shall appoint Deputy Inspector General or Sr. Superintendent of Prisons as a head of the Prison to exercise, subject to the orders of the State Government, the general control and superintendence of all prisons in the State.

Officers of Prisons. 5. For every prison there shall be a Superintendent, a Medical Officer, a Jailer and such other officers as may be appointed by the Government from time to time

Temporary accommodation for prisoners. 6. The State Government shall make provision for the shelter and safe custody in temporary prisons of as many prisoners as it deems fit, who cannot be conveniently or safely kept in the existing Prisons.

CHAPTER III
DUTIES OF OFFICERS
GENERAL

Control and duties of prison officers. 7. (1) The Deputy Inspector General or Sr. Superintendent of Prisons shall carry out all the instruction and direction of the State Government as may be issued from time to time and all officer subordinate to him shall perform all such duties as may be imposed on them. No officer or staff of prison shall do or commit any acts of omission or commission that will give undue and illegal benefit to a prisoner and also to the officer or staff.

(2) All officers of a prison shall obey the directions of the Deputy Inspector General or Sr. Superintendent of Prisons; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent.

Officer not to have business dealings with prisoners. 8. No officers of a prison shall sell or let any person employed by him sell or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings, directly or indirectly, with any prisoner.

Officers not to be interested in prison contracts. 9. No officers of a prison shall, nor any person employed by him, have any interest, direct or indirect, in any contract, for the supply of the prison; nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

SUPERINTENDENT

Duties of Superintendent. 10. (1) Subject to the orders of the Deputy Inspector General / Sr. Superintendent of Prisons, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by the State Government, the Superintendent of a prison shall obey all orders not inconsistent

Superintendent of Prisons all such orders and the action taken there on.

Records to be kept by Superintendent

11. The Superintendent shall keep, or cause to be kept, the following records:
(i) a register of prisoners admitted;
(ii) a book showing when each prisoner is to be released;
(iii) a punishment book for the entry of the punishments inflicted on prisoners for a prison offences;
(iv) a visitor's book for the entry of any observation made by the visitors touching any matters connected with the administration of the prison;
(v) a record of the money and other articles taken from prisoners and all such other records as may be prescribed by rules.

MEDICAL OFFICER

Medical Officer's Duties.

12. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison and shall perform such duties as may be directed by the Superintendent or as may be prescribed by rules.

Medical Officer to report in certain cases.

13 Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper. This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Deputy Inspector General or Sr. Superintendent of Prisons for information.

Report on death of prisoner.

14. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely: -
(i) the day on which the deceased first complained of illness or was observed to be ill;
(ii) the day on which he was admitted to hospital;
(iii) the day on which the Medical Officer was informed of the illness;
(iv) the nature of the disease;
(v) when the deceased was last seen before his death by the Medical Officer;
(vi) when the prisoner died, and
(vii) in case where a post mortem examination is made on account of the appearances after death, together with any special remarks that appear to the Medical Officer to be required.

JAILERS & SUBORDINATE OFFICERS

Jailer and his responsibilities.

15 The Jailer shall reside in the prison unless the Superintendent permits him in writing to reside elsewhere. The Jailer shall not leave the prison for a night without the permission in writing from the Superintendent, but if he has unavoidable circumstances to leave the prison for a night, he shall take permission from the Superintendent. The Jailer shall directly be responsible for the safe custody of the records, commitment warrants and all other documents entrusted to him including money and other articles taken from prisoners.

Jailer to give notice of death of prisoner.

16. Upon the death of a prisoner, the Jailer shall give immediate information thereof to the Superintendent and Medical Officer and to the District Magistrate. The District Magistrate on receipt of such information shall hold inquest or cause to hold inquest and if on preliminary inquest has raised suspicion of some foul play, a videographed post mortem examination shall be conducted. The information of such death shall be communicated to the National Human Rights Commission within twenty-four hours. The Jailer shall collect the relevant documents from the District Magistrate and shall submit to the prison authority without delay.

Jailer / Assistant Sub-Jailer.

be competent to perform any duties of a Jailer under this Act or rules made there under.

Duties of Gate Keeper.

18. The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or carrying out any property belonging to the prison, and, if any such article or property is found, shall immediately bring it to the notice of the Jailer or any superior Officer present in the Prison.

Subordinate officers not to be absent without leave.

19. Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

Prisoners appointed as In-charge of Barracks and cells to be public servants.

20. Prisoners who have been appointed as In-charge of the Barracks or cells shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

CHAPTER IV
ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS

Prisoners to be examined on admission.

21. (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission,be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observation which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the Female Jail Warder and in absence of Female Jail Warder any female on the special orders of the Officer on Duty.

(4) No prisoners shall be admitted or released between sunset and sunrise except those prisoners who have been taken to courts.

Effects of prisoners.

22. All money or other articles in respect whereof no order of a competent court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer.

Removal and discharge of prisoners.

23. (1) All prisoners, prior to removal to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to anotherunless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

CHAPTER V

DISCIPLINE OF PRISONER

Separation of prisoners.

24 The requisition of this Act with respect to the separation of prisoners are as follows: -

(i) in a prison containing female as well as male prisoner, the females shall be imprisoned in separate building, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoner;

(ii) in a prison where male prisoners under the age of eighteen are confined, shall be

puberty shall also be separated from those who have not attained puberty.

(iii) un-convicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(iv) civil prisoners shall be kept apart from criminal prisoners.

Association and segregation of prisoners.

25. Subject to the requirement of the foregoing section, convicted criminal prisoners may be confined either in the association or individually in cells or partly in one way and partly in the other.

Solitary confinement.

26 No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty four hours, whether as a punishment or otherwise, shall be visited at least once a day by a Medical Officer.

Prisoners under sentence of death.

27 (1) Every prisoner under sentence of death shall immediately on his arrival in the prison be searched by, or by order of, the Jailer and all articles shall be taken from him, which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell away from all other prisoners, and shall be placed under the charge of a guard by day and by night.

CHAPTER VI

FOOD, CLOTHING AND BEDDING FOR CIVIL AND UNCONVICTED CRIMINAL PRISONER

Maintenance of certain prisoners from private sources.

28 A civil prisoner or an un-convicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and such other rules as may be prescribed by the Deputy Inspector General / Sr. Superintendent of Prisons. However in case of convicted criminal prisoners the prison authorities shall provide adequate clothing including uniforms and beddings prescribed under this act or rule framed thereunder.

Restriction on transfer of food and clothing between certain prisoners.

29 No part of any food, clothing, bedding or other necessaries belonging to any civil or unconvicted criminal prisoner shall be hired, or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent consider appropriate.

Supply of clothing and bedding to civil and unconvicted criminal prisoner. -

30. (1) Every civil prisoner and un-convicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with suchclothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representatives, shall, within forty-eighthours after the receipt by him of demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

CHAPTER VII

EMPLOYMENT OF PRISONERS

Employment of civil and under-trial prisoners.

31. No civil and under-trial prisoners shall be employed on labour but those desiring to work may be employed with the permission of the Superintendent.

criminal prisoners.

except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in a day.

(2) The Medical Officer from time to time examine the laboring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded in the history-tickets the weight of such prisoner employed on labour.

(3) When the Medical Officer is of the opinion that the health of the prisoner does not allow him / her for employment of any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suitable for him.

Employment of criminal prisoners sentenced to simple imprisonment.

33. The Superintendent may employ all criminal prisoners sentenced to simple imprisonment on labour work but not as punishment for negligent work.

CHAPTER VIII

HEALTH OF PRISONERS

Medical Care Unit

34. In every prison there shall be a Medical Care Unit or a proper place for reception of sick prisoners.

Sick Prisoners.

35. (1) The names of prisoners desiring to see Medical Officer or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Officer to any prisoners desiring to see him, or who is ill or whose state of mind or body appears to require attention and shall carry into effect all written directions given by the Medical Officer respecting alteration of the discipline or treatment of any such prisoner.

Record of directions of Medical Officer.

36. All directions given by the Medical Officer in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day into the prisoner's history-ticket or in such other records as the Government may, by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having complied with, accompanied by such observations, as the Jailer thinks fit to make with the date & time of the entry.

CHAPTER IX

VISITS TO PRISONERS

Visits to civil and under-trial / convicted prisoners.

37. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or un-convicted criminal / convicted prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Search of visitor.

38. (1) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny admission; and the ground of such proceedings, with the particulars thereof, shall be entered in such record as the Government may direct.

TRANSFER OF PRISONERS

Reasons and Circumstances for Transfer.

39 Prisoners may be transferred from one prison to another for the following reasons: -

(i) for custody and treatment in a suitable institution in accordance with the classification procedure,
(ii) for attendance in court for the purpose of standing trial or giving evidence,
(iii) on medical grounds,
(iv) on humanitarian grounds, in the interest of their rehabilitation,
(v) for post-release vigilance by the police,
(vi) for providing essential services,
(vii) on grounds of security, expediency,
(viii) to be nearer to his / her home district,
(ix) for other special reasons.

Removal of prisoners from one State to another.

40. Where any person is confined in a prison in a State: -

a. under sentence of death; or
b. under or in lieu of a sentence of imprisonment or transportation; or
c. in default of payment of fine; or
d. in default of giving security for keeping the peace; or
e. for maintaining good behavior;

The Government of the State, with the consent of the Government of any other state, by order, provide for the removal of the prisoner from that prison to any prison in the other States under this Act or rule made thereunder.

CHAPTER XI

EMERGENCIES

Situation to be handled on an emergency basis.

41. (1) The following situation shall be handled as emergencies namely: -

(i) escape from prison;
(ii) outbreak;
(iii) riot;
(iv) strike;
(v) hunger strike (individual or mass);
(vi) assault;
(vii) suicide;
(viii) fire;
(ix) epidemic;
(x) earthquake
(xi) terrorist attack

Measures to prevent and control emergency situation.

42 It shall be the responsibility of the Superintendent or any officer present to take sufficient measures for preventing and controlling emergency situations. These measures shall include all such necessary and immediate actions as per the need of the situation under this Act or rule made thereunder.

CHAPTER XII

EDUCATION OF PRISONERS

Importance of Education for prisoners.

43. (1) Education is vital for the overall development of prisoners. Through education their outlook, habits and total perspective of life can be changed. Education of prisoners benefits the society as well as it leads to their rehabilitation and self-sufficiency. Education reduces the tendency to crime. This would mean less crime, fewer vic tims, fewer prisoners, more socially productive people, and less expenditure on criminal justice and law enforcement.

(2) Life in prison is extremely monotonous, routinised and regimented. The education activities offer opportunity to a prisoner to remove from his mind depressing thoughts leading to relaxation and joy. Reality must be accepted that to confine offenders behind walls, without trying to change them through education and other activities, is anexpensive folly.

Objective behind educational programme.

44. The objectives behind educational programmes in prisons should be to channelise prisoners' energies into constructive and creative pursuits, instilling in them a sense of confidence, developing amongst them social responsibility and consciousness, fostering amongst them habits and attitudes necessary for adjusting in the community, creating amongst them an awareness of the futility of leading a criminal life and uplifting them morally, mentally and socially. A comprehensive educational programme shall be framed in accordance to the requirement as deemed necessary under this Act or rule made thereunder.

CHAPTER XIII

VOCATIONAL TRAINING AND PROGRAMMES

Vocational training and work programmes.

45. (1) Vocational training and work programmes should be treated as essential features of the correctional programmes for the purpose of: -
- (i) imparting discipline and work culture among inmates.
- (ii) developing right attitudes towards work and dignity of labour.
- (iii) promoting: -

(a) physical and mental well-being of inmates,
(b) proper development of mind through intelligent manual labour,
(c) spirit of fellowship and a cooperative way of living, and
(d) a sense of group adjustment.
(iv) developing capacity for sustained hard work.
(v) building habits of concentration, steadiness, regularity and exactness of work,
(vi) imparting and improving work-skills,
(vii) awakening the self-confidence and self-reliance of inmates.
(viii) training and preparing inmates for achieving lasting social readjustment and rehabilitation,
(ix) imparting an occupational status and thus creating a sense of economic security among inmates,
(x) keeping inmates usefully employed in meaningful and productive work,
(xi) preventing idleness, indiscipline and disorder amongst them,
(xii) maintaining a good level of morale amongst them and thus promoting a sense of self-as well as institutional discipline among them.

(2) For the purpose to achieve this objective a clear policy for the work programmes and vocational training of prisoners shall be framed under this Act or rule made thereunder.

CHAPTER XIV

LEAVE AND SPECIAL LEAVE

Benefit of Leave.

46. Leave and special leave to inmates are progressive measures of correctional services. The release of a prisoner on leave not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him maintain and develop a sense of self-confidence. Continued contacts with family and community sustain in him a hope for life.

Objective.

47. The objectives of releasing a prisoner on leave are: -
- (i) to enable the inmate to maintain continuity with his family life and deal with family matters,
- (ii) to save him from the evil effects of continuous prison life,
- (iii) to enable him to maintain and develop his self-confidence
- (iv) to enable him to develop constructive hope and active interest in life.

Special Leave.

48. (1) Special leave may be granted to a prisoner in special situations such as:
(i) death or serious illness of father / mother / brother / sister / spouse / children.
(ii) marriage of brother / sister / children.

(2) The period spent on leave will be counted as sentence served, while that spent on special leave will not count as such. The period spent on special leave will be treated as 'out days' or sentence suspended for all purpose.

(3) The manner and procedure, by which, leave or special leave are granted, the category of prisoners eligible for such leave or special leave and the stipulated conditions thereof shall be in a manner prescribed under this Act or rule made thereunder.

CHAPTER XV

PREMATURE RELEASE

Advantages of good conduct.

49 The primary objective underling premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behaviour and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most important consideration for pre-mature release of prisoners is that they have become harmless and useful member of a civilized society. For the purpose of recommending the pre-mature release of prisoner a Sentence Review Board should be constituted to advise the Government for release of prisoner and the procedure thereof in a prescribed manner under this Act or rule made thereunder.

CHAPTER XVI

WOMEN PRISONER

Prison administration for female offenders

50 The prison administration shall keep the female offender in a strictly secluded female enclosure.

Classification and separation.

51. Women prisoners shall be classified and kept separately as under, namely: -:
(i) under-trial prisoners shall be kept completely separated from convicted offenders, even when their number is small;
(ii) habitual prisoners shall be kept separately;
(iii) prostitutes and brothel keepers must also be confined separately;

Notes: -
(i) no criminal, or non-criminal, lunatic will be kept in the prison;
(ii) no classification of prisoners shall be allowed on grounds of socio-economic status, caste or class;

Restriction on women prisoners.

52 (1) No female prisoner shall, on any pretext, leave or be removed from the female enclosure except for release, transfer, or attendance at court, or under the order of the superintendent for other legitimate purpose.

(2) Every female prisoner authorized to leave her enclosure will ordinarily be accompanied by a female warder from the time she leaves till she returns.

Exclusion of Males.

53 (1) No male shall be permitted to enter the female ward of any prison, at any time, unless he has a legitimate duty to attend therein. No adult male shall enter it at all by night except in an emergency, and even then only along with the female warder. He shall thereafter record a clear report of his visit with the reasons for such visit, and the hour thereof, in his report book.

shall remain outside the enclosure.

(3) If at any time a male prison officer or warder enters, or of attempts to enter, any ward or portion of a prison reserved for female prisoners, without proper authority, it shall be reported to the Superintendent forthwith.

Locks of Female Enclosures

54 The locks of enclosure and barracks, where women are confined shall, be different from those in use in other parts of the prisons, so that there is no possibility of keys for locks of other enclosures being misused for opening enclosures for women prisoners.

Custody of Female Enclosure

55. There shall be round the clock duty of female warders in the female enclosures.

Search of Women Prisoners on Admission.

56 Women prisoner shall be searched by female warder with due regards to consideration of privacy and decency.

Pregnancy.

57 When a women prisoner is found, or suspected, to be pregnant at the time of admission or later, the Medical Officer shall report the fact to the Superintendent. Arrangements shall be made at the earliest to get her medically examined at the Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy and the prob - able date of delivery. After ascertaining all necessary particulars, a detailed report shall be sent to the Deputy Inspector General / Sr. Superintendent of Prisons.

Child Birth in Prison

58. (1) As far as possible arrangements for temporary release will be made to enable a prisoner to deliver child outside the prison.

(2) Births in prison shall be registered at the local birth registration office.

Property of Women Prisoner.

59. All money, jewellery, and articles of clothing, received with or found on the person of a woman prisoner on her admission to the prison, or sent subsequently by the police, or tendered by her relatives or friends on her behalf prior to her release, shall be received and taken over by the Jailer or other officer on duty. A list of all such articles shall be entered in the Admission Register and in the convict's warrant and read over to the convict in the presence of the Jailer who shall countersign the entries in the register and in the warrant. Method of storing the prisoner's money or valuables, shall be according to the general rules laid down in the Prison Manual.

Children of Women Prisoner

60. (1) A child up to six years of age shall be admitted to prison with his mother if no other arrangements, for keeping him with relatives or otherwise, can be made. Children born in prison may remain with their mother upto six years of age, if they cannot otherwise be suitably placed. The Medical Officer shall determine the age of chil - dren not born in prison for the purpose of this provision.

(2) No child shall be admitted into or retained in prison if he has attained the age of six years. The Superintendent shall inform the Directorate of Social Welfare about all children of that age for placing them in a home run by the Social Welfare Depart- ment.

(3) Children kept under protective custody in a home of the Department of Social Wel- fare shall be allowed to meet their mother at least once a week.

This apart, any guideline required on the subject shall be framed under this Act or rule made thereunder.

BOARD OF VISITORS

Constitution of Board.

61 (1) The State Government shall, by notification, constitute a Board of Visitors at District Level and also State Advisory Board comprising of Official and Non-Official members to monitor correctional work in prison, suggesting new avenues leading to the improvement in the correctional work, going into individual or collective grievances of prisoners and providing redressal in consultation with the prison authorities.

(2) For this purpose a rule shall be framed in a prescribed manner under this Act.

CHAPTER XVIII
OFFENCES IN RELATION TO PRISONS

Penalty for introducing or removal of prohibited articles into or from prison and communicate with prisoners.

62. Whoever, contrary to any rule introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communi cates or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or with both.

Power to arrest for offence under section 62.

63 When any person, in the presence of any officer of a prison, commits any offence specified in the foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police Officer, and thereupon such Police Officer shall proceed as if the offence had been committed in his presence.

Publication of penalties.

64 The Superintendent shall cause to be affixed in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 65 and the penalties incurred by their commission.

CHAPTER XIX
PRISON OFFENCES.

Prison Offences.

65. (1) The discipline in Prisons has to be maintained with fairness and firmness. It has to cover every aspect of life in the prisons. A punishment for indiscipline has to be balanced in relation to the gravity of the violation. A positive approach towards prison discipline involves not only a strict adherence to rules and regulations but also a fair, just and equitable handling of prisoners on the part of the staff.

(2) After their admission, all prisoners should be informed of their rights, duties and disciplinary requirements in the prisons, in a language understandable to them. This aspect may be displayed on a board accessible to prisoners.

(3) The following acts are declared to be prison offences when committed by a prisoner, namely: -

(i) endangering the security and custody of a prison in any way, by a willful or negligent act and shall include tampering in anyway with prison walls, building, bars, locks and keys, lamps or lights or with any other security and custody measures;

(ii) doing any act calculated to create unnecessary alarm in the minds of other prisoners;

(iii) doing or omitting to any act with intent to cause to oneself any illness, injury or disability;

(iv) omitting to report the commission of any prison offence;

(v) breaking law and order and discipline;

(vi) planning, instigating, abetting, directly or indirectly, in the commission of any prison offence;

regulations and lawful instructions and orders;
(viii) failing to assist in the maintenance of prison discipline;
(ix) failing to give assistance to a prison official when called to do so;
(x) making false, malicious and groundless, written or verbal complaint against prison officials;
(xi) committing nuisance or mischief of any kind;
(xii) quarrelling with other prisoners;
(xiii) smoking;
(xiv) attacking, assaulting and causing injuries to others;
(xv) participating in a riot or mutiny, abetting another prisoner to do the same;
(xvi) escaping or attempting to escape from prison or legal custody or failing to report to prison officials about attempted escapes;
(xvii) possessing, hiding, smuggling or attempting to smuggle, obtaining, giving or receiving or bartering contraband articles, failing to report to prison officials about contraband articles;
(xviii) stealing / damaging / destroying / disfiguring / misappropriating any Government property or another prisoners' articles and property;
(xix) failing to report at once any loss, breakage or injury which the prisoner may accidentally have caused, to prison property or implements;
(xx) tampering with or defacing identity cards, records or documents;
(xxi) breach of the conditions of leave and emergency release;
(xxii) refusing to eat food or going on hunger strike;
(xxiii) eating or apportioning any food not assigned to him or taking from or adding to the portions assigned to another prisoner;
(xxiv) willfully or negligently destroying or spoiling food or throwing it away without orders;
(xxv) introducing into food or drink anything likely to render it unpalatable;
(xxvi) unauthorized cooking;
(xxvii) violating rules and regulations framed for the systematic running of the canteen;
(xxviii) bartering canteen articles;
(xxix) Being idle, careless or negligent at work, refusing to work, malingering, disturbing other prisoners at work or in barracks;
(xxx) manufacturing any article without the knowledge or permission of a prison officer;
(xxxi) performing any portion of the task allotted to another prisoner or obtaining unauthorized assistance of another prisoner in the performance of one's own task;
(xxxii) apportioning to any prisoner any part of the task to be performed by him / her;
(xxxiii) mixing or adding a foreign substances to the materials issued for work;
(xxxiv) willfully disabling himself from labour;
(xxxv) converting or attempting to convert, a prisoner to a different religious faith;
(xxxvi) willfully hurting other's religious feeling, beliefs and faiths;
(xxxvii) agitating or acting on the basis of caste or religious prejudices,
(xxxviii) having any communication, in writing or by word or by signs, without permission, with any outsider, an under-trial prisoner, detenus, civil prisoner and approvers;
(xxxix) sending messages surreptitiously by writing or verbally;
(xl) participating in or organizing unauthorized activities like gambling and betting;
(xli) using indecent, abusive, insolent, threatening or improper language, being disrespectful, making indecent or vulgar acts or gestures;
(xlii) soiling or befouling any place or article;
(xliii) loitering or lingering, leaving the appointed area or work-group without permission;
(xliv) failing to assist or preventing another person from assisting prison officials in suppressing violence, assault, riot, mutiny, attack, gross personal violence or any other emergencies;

Punishment of such offences.

66 (1) No officer other than the Superintendent may examine any person committing such offence, and determine thereupon, and punish such offence by: -
(i) a formal warning: -

prisoner by the Superintendent and recorded in the punishment book and on the prisoner's history-ticket;

(ii) change of labour to some more irksome or severe form for such period as may be prescribed by rules made by the State Government from time to time;

(iii) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;

(iv) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government from time to time;

(v) separate confinement for any period not exceeding three months or as specified by the authorized authority,

Explanation: separate confinement means such confinement with or without labour and secludes a prisoner from communication with, but not from sight of, other prisoner, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners:

(vi) Penal diet- that is restriction of diet in such manner and subject to such conditions regarding labour as may be determined by the Deputy Inspector General / Sr. Superintendent of Prisons:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than Forty-eight consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week;

(2) No prisoner may be punished unless he has been informed of the offence alleged against him and given proper opportunity of presenting his defense. The competent authority may conduct an inquiry into the case. No prisoner may be punished except in accordance with the terms of laws or regulations.

(3) No prisoner shall be punished twice for the same offence provided that any security measure (separate confinement) taken for the safe custody of a refractory and dangerous prisoner or for preventing him from committing mischief or stoppage of privileges which are otherwise admissible to well behaved prisoners only, may not be construed as prison punishment for this purpose.

(4) The punishment of confinement or fatigue work may not be implemented unless the Medical Officer has examined the prisoner and certified in writing that he/she is fit to sustain it. The same rules may apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner.

Medical Officer to Certify the fitness of prisoner for punishment.

67 (1) No punishment of penal diet, either singly or in combination, or hard labour under clause (v) of sub-section (1) of section 66 of this Act shall be awarded to any prisoner until the prisoner has been examined by the Medical Officer and has been found fit to undergo the punishment and certified accordingly by the Medical Officer in the appropriate column of the punishment-book prescribed for this purpose.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in the like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind or whether he considers any modification.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

Entries in Punishment books.

68 (1) In the punishment book to be prescribed, every punishment inflicted shall be recorded with the name of the prisoners, register number and the class (whether habitual or not) to which he belongs, the prison offence of which he was guilty, the date on which such prison offence was committed, the number of previous prison offences recorded against the prisoner and the date of his last prison offence, the punishment awarded and the date of infliction.

(2) In the case of every serious prison offence, the names of the witnesses proving the offence shall be recorded and in case of offences for which serious punishment is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner and the finding with the reasons therefore.

(3) Against the entries relating to each punishment the Jailer and the Superintendent shall affix their initials as evidence of the correctness of the entries.

Procedure on commission of heinous offence.

69 If any prisoner is guilty of any offence against prison discipline which, by reason of having been frequently committed or otherwise, in the opinion of Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award; the Superintendent may forward such prisoner to the court of any Magis trate of the first class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extent to one year, such term to be in addition to any term for which prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishment enumerated under this Act;

Provided that any such case may be transferred for inquiry and trial by such Magis trate to any other Magistrate of first class and that no prisoner shall be punished twice for the same offence.

Offences by prison subordinates.

70 Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulations or lawful order made by competent authority or who shall withdraw from duties without permission or without having given previous notice in writing of his intention or who shall willfully overstay any leave granted to him or who shall engage without authority in any employment other than his prison duty or who shall be guilty of cowardice, shall be liable , on conviction before a Magistrate, to a fine not exceeding rupees five hundred or to imprisonment for a period not exceeding three months or both.

CHAPTER XX

MISCELLANEOUS

Extramural custody, control and employment of prisoners.

71 A prisoner when being taken to or from any prison in which he may be lawfully confined or whenever he is working outside or otherwise beyond the limits of any prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison.

Power to make rules.

72 (1) The State Government may make rules consistent with tins Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: -

(i) defining the acts which shall constitute prison offences;

(ii) determining the classification of prison offences into serious and minor offences;

(iii) fixing the punishment admissible under this Act which shall be awardable for commission of prison offences or classes thereof;

(iv) declaring the circumstances in which acts constituting both a prison offence and an offence under the Indian Penal Code may or may not be dealt with as a prison offence;

(v) for the award of marks and the shortening of sentences;

(vi) regulating the use of arms against any prisoner or body of prisoners in case of an outbreak or attempt to escape;

(vii) defining the circumstances and regulating the conditions under which prisoners in serious health conditions may be released;

(viii) for classification of prisons and description and construction of wards, cells and other places of detention;

(ix) for regulation by numbers, length or character of sentences or otherwise, of the prisoners to be confined in each class of prison;

(x) any subject matter relating to prisons and for the appointment of officers ap pointed under this Act;

(xi) as to food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost;

(xii) for the employment, instructions and control of convicts within or without prisons;

(xiii) for defining the articles introduction or removal of which into or out of prisons without due authority and prohibition thereof;

(xiv) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;

(xv) for regulating the disposal of proceedings of the employment of prisoners;

(xvi) for the classification and separation of prisoners;

(xvii) for regulating the confinement of convicted criminal prisoners under section 26;

(xviii) for the preparation and maintenance of history tickets;

(xix) for the selection and appointment of prisoners as officers of prison;

(xx) for rewards for good conduct;

(xxi) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire subject, however, to the consent of the State Government of any other State to which a prisoner is to be transferred;

(xxii) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;

(xxiii) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;

(xxiv) for the appointment and guidance of visitors of prisoners;

(xxv) for extending any or all of the provisions of this Act and of the rules framed there-under to subsidiary jails or special places of confinement appointed under rules and officers employed and the prisoners confined therein;

(xxvi) in regard to the admission, emergencies, education of prisoners, vocational training and programmes, leave and special leave, women prisoner, Board of Visitors, custody, employment, dieting, treatment and premature release of prisoners; and generally carrying into effects the purposes of this Act.

Exhibition of copies of rules.

73. Copies of rules shall be exhibited both in English and in the Vernacular in some place to which all the persons employed within a prison have access.

Exercise of powers of Superintendent and Medical Officer.

74. All or any of the powers and duties conferred and imposed by this Act on the Deputy Inspector General / Sr. Superintendent of Prisons, Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the State Government may appoint on his behalf either by name or by his official designation.

Protection of actions taken in good faith.

75. No suit, prosecution or other legal proceedings shall lie against any officer or staff of the prison for executing any order made by the competent authority or in respect of anything which is done in good faith or intended to be done by such officer or staff or person under this Act or any rules or order made there-under.

Validation of Acts and Saving.

76 Notwithstanding anything contained in any other laws or rules or orders for the time being in force and any action taken in pursuant to such laws or rules or order in so far as they are not in consistent with the provisions of this Act, the same shall be deemed to have been validly made or done under this Act as if this Act was in force at all the material time when such actions or orders were taken or made.

Power of Prison Officers during emergency.

77. During emergent situation involving security of prisons and natural calamity such as landslide, epidemic, etc. the Deputy Inspector General / Sr. Superintendent of Prisons and Superintendent shall have the powers to request any Department to provide facilities or services for the maintenance and upkeep of prisoners. On receipt of such a request, it shall be the duty of the Department concerned to make all possible efforts.

Removal of doubts.

78. If any doubt arises as to the interpretation of the provisions of this Act the same shall be referred to the Government in the Department of Home, Government of Sikkim whose decision shall be final.

By Order.

R.K. PURKAYASTHA (SSJS)
LR-cum-Secretary
Law Department
File No. 16(82)/ LD/P/2007